



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: April 13, 2010

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Subject: Petition for a use variance (Z-4-10) to permit three dwelling units in an R-1C "Single Family Residential District" at property located at 114 Fremont Street, Property ID #5350-00-106-0.

Summary

This report addresses a petition from Ken Hardy seeking approval of a Use Variance (Z-4-10), to allow a three family dwelling in an R-1C "Single Family Residential District".

Background/Project Information

The subject site is located at 114 Fremont. Assessing records show the lot is approximately 42.5' feet wide by 132' feet deep with an area of approximately 5,610 sq. ft. The property is located within the R-1C (Single Family) District. The subject lot meets the minimum lot area standard but not the minimum width standard of 50' for the R-1C zone. The lot is generally rectangular in shape and the topography of the lot is generally flat with no observable grade changes. The Appellant is requesting a use variance to permit a 3 family dwelling in an R-1C "Single Family Residential District." In this case, the Appellant states "this building has been a 3 unit building for over 18 years and has not had any deviations since."

A letter dated January 21, 2010 sent by City staff states that City records demonstrate the structure was built in 1901 as a single family dwelling. In 1924 the property was zoned "A Single Family Residential District". In 1950 the property was zoned "C Two Family Residential District" which allowed two residential housing units. The property is currently zoned R-1C "Single-Family Residential" which allows a maximum of one residential housing unit. Two residential units would be permitted as a legal nonconforming use, but not a three unit residential dwelling. There are no records of when the building was converted from a two family residential dwelling to a three family residential dwelling unit. As the property has never been zoned to allow for more than two units it is determined that the structure is in violation of Chapter 1248.02 of the Codified Ordinances of Battle Creek and must be returned to no more than a two unit dwelling.

VIOLATIONS; REMOVAL OR CORRECTION.

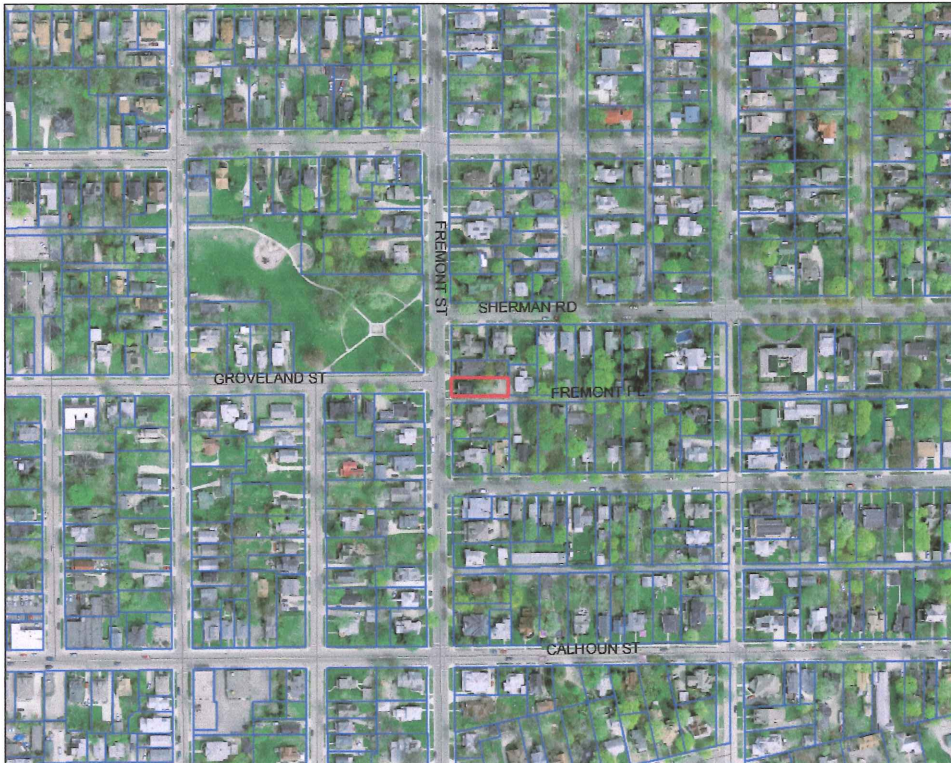
A nonconforming structure that was erected, converted or structurally altered in violation of any previous Zoning Code adopted by the City of Battle Creek or the Township of Battle Creek shall not be validated by the adoption of this Zoning Code, and such violation or any violation of this Zoning Code may be ordered to be removed or corrected by the proper official at any time.

(Ord. 36-84. Passed 12-18-84.)

The property owner in this case has made application to the Zoning Board of Appeals to allow for a two-unit dwelling to be established in an R-1C zone.

Surrounding Land Uses

The subject property is located on Fremont just south of Sherman in a residential neighborhood.



Aerial Photo of subject

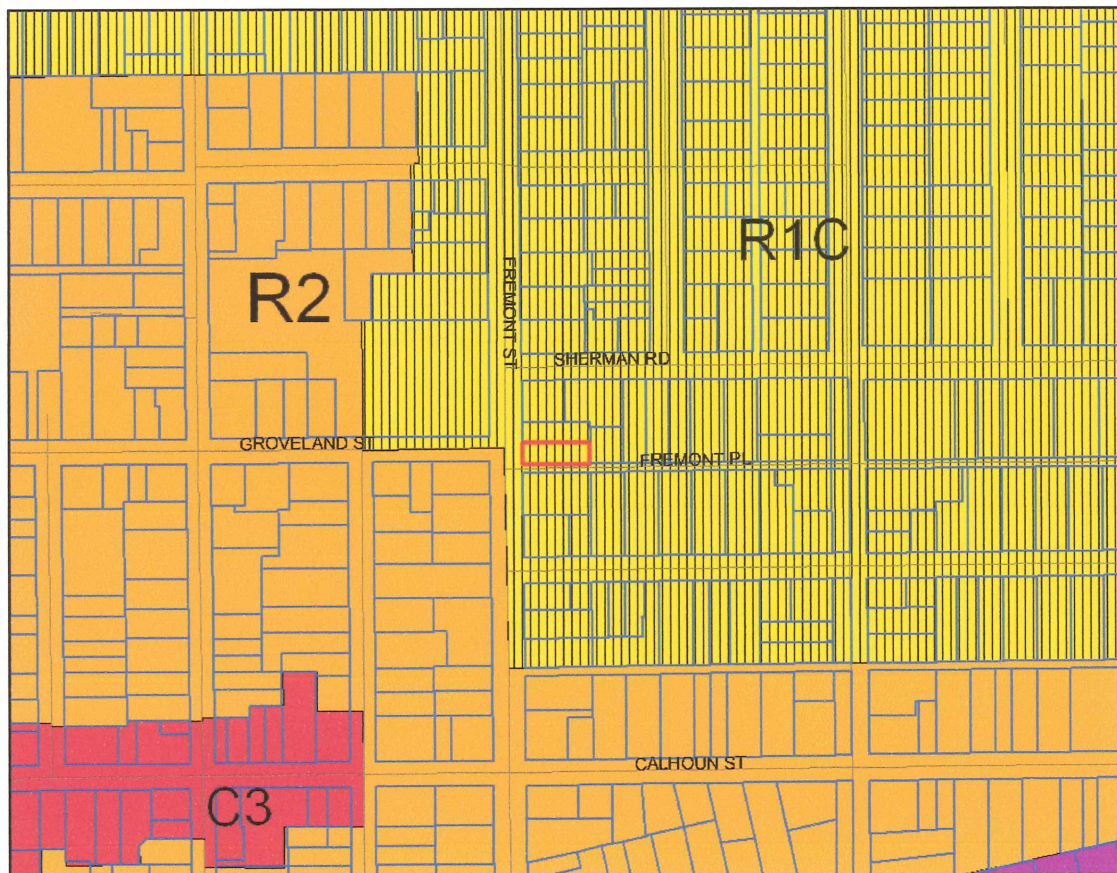
Legal Description

MERRITTS ADD S 42.5 FT OF LOTS 61 & 62

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, March 18, 2010 – not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on March 15, 2010 to 44 properties located within 300 feet of the subject parcel.



Current zoning of subject parcel and surrounding area

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

Please note that the above language comes directly from the City of Battle Creek zoning ordinance. However, as outlined in the Michigan Zoning Enabling statute, only the "unnecessary hardship" factor should be considered when reviewing use variance requests.

In accordance with the statute, a revised decision tree has been drafted and is included in this packet. Additionally, the ordinance is being revised to be consistent with the enabling legislation.

Analysis

The Appellant is requesting a use variance that would authorize a three-family dwelling in an R-1C "Single Family Residential District". The Appellant has stated that property was purchased almost 5 years ago as a three unit building. The Appellant supplied reasons supporting the request for appeal and they are included with the application and part of this report.

Is there something unique about this lot or property that makes relief necessary? The property is approximately 42.5' wide and 132' deep and it does not meet the minimum lot width standard of 50' for lots in the R-1C zone. The lot is relatively flat with no noticeable grade change. The subject property is located in a single family residential zoned neighborhood. The Appellant's complete stated "unnecessary hardship" is included in this report. Members of the Zoning Board of Appeals know that we will always try to help identify specific elements of "unnecessary hardship" where we feel that relief is warranted but we can not site any specific reasons in this particular case. A concurring vote of 5 members is necessary to effect a variance from uses of land permitted in the Battle Creek zoning code.



FINDINGS

In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. We have provided a rationale for each condition set forth below for Use Variances:

- 1) Staff finds that there is not an unnecessary hardship for the property owner to use the land in a manner prohibited by the uses permitted in the R-1C zoning district. Staff believes the property can be reasonably used in compliance with the zoning code and for this reason we do not believe that there is an unnecessary hardship in this case.
- 2) Staff does not believe that the proposed use variance is in harmony with the general purpose and intent of the zoning code. We think the property could be converted to a

single family use permitted in the R-1C district or a two family use permitted as a legal nonconforming use as stated in a letter dated January 21, 2010, and we understand that there will be a loss of rental income in doing so.

- 3) While we understand that the three-family use and building may have been in operation for a period of time in the past, we do not think that by granting the proposed use variance that it will serve as anything more than a convenience to the applicant from converting the property to single or two family use. We do not think that the granting of a use variance will alleviate some demonstrable and unusual hardship so great as to warrant a variation from the master plan.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met as well to grant the requested use variance.

- 1) Staff does not believe the petitioner has clearly demonstrated that unnecessary hardship will, in fact, exist if the proposed variance is not granted.
- 2) Staff does not necessarily believe that the appellant has created the unnecessary hardship associated with this request. At some point in time the building was converted to a three-family use. However, current zoning of the property does not allow the proposed use. It is the intent of the zoning code to have all properties and uses in compliance with the zoning code and zoning districts where they are located.
- 3) Staff does not believe that the unnecessary hardship is exceptional and peculiar to the property of the person requesting the variance in that the property is located in the center of an R-1C district on Fremont Street. The property could be used for any use permitted in the R-1C district.
- 4) Staff does not think that the Appellant has furnished documentation to convince and indicate to us that unnecessary hardship does, in fact, exist.
- 5) Staff does not believe the alleged unnecessary hardship which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case. We understand that there will be a loss of rental income, possibly substantial, to convert the property to a conforming single or two family use.
- 6) Staff does not think that by allowing the variance substantial justice being done will result, considering the public benefits intended to be secured by the Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- 7) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- 8) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. Planning staff recommends that the Zoning Board of Appeals deny the Use Variance (Z-4-10) based on the above listed findings contained in this staff report.

Attachments

The following information is attached and made part of this Staff Report.

1. ZBA Petition Form (Petition #Z-4-10), cover letter, and exhibits A-E supplied by Applicant
2. General Property Information gathered from Assessing Records
3. Use Variance Standards Decision Tree outlined by the City Attorney's Office titled "Use Variance Standards Revised Nov 2009"
4. Letter dated 1/21/2010 from the Planning Supervisor and Neighborhood Services Manager outlining history of property